

WILLIAM K. HARRINGTON
United States Trustee for Region 2
201 Varick Street, Room 1006
New York, NY 10014
Telephone: (212) 510-0500
By: Paul K. Schwartzberg
Trial Attorney

HEARING DATE: March 1, 2017
HEARING TIME: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
In re	:	Case No. 15-23683 (RDD)
	:	
LISA MAURO,	:	(Chapter 11)
	:	
Debtor.	:	
	:	
-----X	:	

PLEASE TAKE NOTICE that upon this Notice of Motion and the accompanying memorandum of law, William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”), will move this Court before the Honorable Robert D. Drain, Bankruptcy Judge, in the United States Bankruptcy Court, 300 Quarropas Street, White Plains, NY 10601, Courtroom 118 on March 1, 2017 at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order converting this Chapter 11 case to a Chapter 7 case or, in the alternative, dismissing this Chapter 11 case, and for such other and further relief as this Court may deem just and proper. The original application is on file with the Clerk of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE that any responsive papers should be filed with the Court and personally served on the United States Trustee, at 201 Varick Street, Room 1006, New York, NY 10014, to the attention of Paul K. Schwartzberg, Esq., no later than three (3) days prior to the return date set forth above. Such papers shall conform to the Federal Rules of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York
January 19, 2017

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Paul K. Schwartzberg
Paul K. Schwartzberg
Trial Attorney
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New York, NY 10014
Tel. No. (212) 510-0500
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Case No. 15-23683 (RDD)
	:	
LISA MAURO,	:	(Chapter 11)
	:	
Debtor.	:	
	:	
-----X	:	

**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE
IN SUPPORT OF MOTION FOR AN ORDER TO CONVERT
THIS CHAPTER 11 CASE TO A CHAPTER 7 CASE OR,
ALTERNATIVELY, TO DISMISS THIS CHAPTER 11 CASE**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

This memorandum of law is in support of the motion (the “Motion”) of William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”) for an order converting this Chapter 11 case to a Chapter 7 case, or in the alternative dismissing this Chapter 11 case.

INTRODUCTION

Lisa Mauro (the “Debtor”) commenced this case over 14 months ago to pursue loss mitigation on the first and second liens encumbering her residence. On January 18, 2017, this Court entered orders terminating loss mitigation. The Debtor’s exclusive period to file a plan of reorganization has expired. As of the date hereof, the Debtor has not filed a plan or a disclosure statement. Therefore, cause exists to convert or dismiss this case pursuant to Bankruptcy Code Section 1112(b)(4)(J). Debtor’s counsel advised the United States Trustee that the Debtor seeks conversion of her case to a case under Chapter 7.

FACTS

1. On November 22, 2015, the Debtor commenced this Chapter 11 case by filing a voluntary petition. ECF No. 1.

2. The Debtor's primary asset is her residence located at 603 Harrison Avenue, Harrison, New York 10528 (the "Residence"), listed with a value of \$1,150,000. See Bankruptcy Schedule A, ECF No. 1. The Residence is encumbered by mortgage and judgment liens aggregating \$1,522,426.00. Bankruptcy Schedule D, ECF No. 1.

3. The Debtor has continued in possession of her assets.

4. Due to the lack of creditor interest, the United States Trustee has been unable to form a committee of unsecured creditors in this case.

5. The Debtor commenced this case to pursue loss mitigation on the first and second liens encumbering the Residence. Affidavit of Lisa Mauro at ¶3, ECF No. 4.

6. On January 27, 2016, the Court entered orders granting the Debtors requests for loss mitigation in connection with the first two encumbrances upon the Residence. ECF Nos. 9 & 10.

7. On January 18, 2017, the Court entered orders terminating both of the Debtor's loss mitigation procedures. ECF Nos. 31 and 32.

8. The exclusive period for the Debtor to file a plan expired on or about March 22, 2016. See 11 U.S.C. § 1121(b). As of the date hereof, the Debtor has not filed a plan or disclosure statement. See Declaration of Paul Schwartzberg attached (the "Declaration") hereto as Exhibit 1.

ARGUMENT

Cause Exists to Convert or Dismiss this Case

Section 1112(b) of the Bankruptcy Code describes a variety of factors which may constitute "cause" for the conversion of a Chapter 11 case to a Chapter 7 case or dismissal of a case. See 11 U.S.C. § 1112(b). Under this provision, the court may find cause in the following circumstances, among others:

- (J) failure to file disclosure statement, or to file or confirm a plan, within the time frame fixed by this title or by order of the court; and

See 11 U.S.C. § 1112(b)(4)(J).

The circumstances listed in section 1112(b), however, are not exhaustive, and courts are free to consider other factors. In re BH S&B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010). The bankruptcy court has wide discretion to determine if cause exists and how to ultimately adjudicate the case. In re The 1031 Tax Group, LLC, 374 B.R. 78, 93 (Bankr. S.D.N.Y. 2007); cf. In re C-TC 9th Ave. P'ship, 113 F.3d 1304, 1311 (2d Cir. 1997) (bankruptcy Court may dismiss Chapter 11 filing on motion or sua sponte upon a finding that the filing was in "bad faith" even without consideration of factors set out in section 1112(b)). Once a party establishes cause, the burden is on the respondent to demonstrate that dismissal or conversion is not in the best interest of the estate. In re Halal 4 U LLC, 2010 WL 3810860 * 2 (Bankr. S.D.N.Y. 2010).

The Debtor Has Not Moved Towards Confirmation

As noted above, over a year has passed and the Debtor has failed to file a disclosure statement or plan. The Debtor's exclusive period under § 1121(b) has expired. Failure to timely confirm a plan constitutes cause for conversion or dismissal. See 11 U.S. C. § 1112(b)(4)(J), see also BH S&B Holdings, LLC, 2010 WL 4644440 * 7 (Bankr. S.D.N.Y. 2010)(cause for

conversion found where the debtors's exclusive period expired after several extensions were granted and no plan had been filed); In re Tornheim, 181 B.R. 161, 164-65 (Bankr. S.D.N.Y. 1995) (where debtors' case was not complex, conversion or dismissal was required because debtors' failure to file a plan showed both unreasonable, prejudicial delay and inability to effectuate a plan); In re Hi-Toc Development Corp., 159 B.R. 691, 693 (Bankr. S.D.N.Y. 1993); In re Canion, 129 B.R. 465, 470 (Bankr. S.D. Tex. 1989).

Finally, Debtor's counsel advised the United States Trustee that the Debtor seeks the conversion of her case to a case under Chapter 7. Declaration at ¶ 3.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order converting this Chapter 11 case to a Chapter 7 case or, in the alternative, dismissing this Chapter 11 case, and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
January 19, 2017

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

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